

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CIVIL ACTION FILE NO.: 5:19-CV-26

WOODROW SCOTT ORNDORFF,)	
JR.,)	
Petitioner,)	
)	
v.)	VERIFIED PETITION TO PERPETUATE
)	TESTIMONY
UNITED STATES OF AMERICA and)	
FEDERAL BUREAU OF PRISONS,)	
Respondents.)	

Petitioner Woodrow Scott Orndorff, Jr., by and through undersigned counsel, submits this Verified Petition to Perpetuate Testimony, under Federal Rule of Civil Procedure 27. Mr. Orndorff is a prisoner in the custody of the Federal Bureau of Prisons who recently was granted compassionate release due to his advanced-stage cancer. He is terminally ill and it is unclear how much longer he will survive. He submits this Petition to Perpetuate Testimony so that he may maintain a civil action for the benefit of his estate against the United States and the Federal Bureau of Prisons (collectively, the "Government"), as necessary, following exhaustion of administrative remedies pursuant to the Federal Tort Claims Act.

In support of this Petition, Mr. Orndorff provides as follows:

1. Under Rule 27, "a person who wants to perpetuate testimony about any matter cognizable in a United States court may file a verified petition in

the district court for the district where any expected adverse party resides." Fed. R. Civ. P. 27(a)(1).

2. Mr. Orndorff is an inmate in the custody of the Federal Bureau of Prisons. He previously was housed at Federal Medical Center, Butner ("FMC Butner"), which is located in this District, before recently receiving compassionate release. *See* 28 U.S.C. § 113(a). The acts and omissions of which Mr. Orndorff complains arise out of his incarceration at Federal Correctional Institute, Butner ("FCI Butner"), a low-security unit housed on the same property as FMC Butner. Venue thus is proper in this District. 28 U.S.C. § 1402.

3. Mr. Orndorff was transferred to FCI Butner on October 18, 2016. At that time, the facility ordered a chest x-ray, which uncovered a small nodule, approximately 2 mm in size, in his left lung. *See* Ex. 1. The radiologist recommended a follow-up x-ray, as well as a CT scan to assess the stability of the nodule.

4. Despite this revelation, Mr. Orndorff received no follow-up treatment during his time at FCI Butner.

5. On December 23, 2017, the Government transferred Mr. Orndorff to Federal Correctional Institute, McDowell ("FCI McDowell"), in Welch, West Virginia.

6. While at FCI McDowell, Mr. Orndorff experienced a number of painful, debilitating symptoms accruing from the nodule located in his left lung.

These symptoms include: difficulty breathing, ringing in his left ear, and excruciating chest pain. On August 3, 2018, Mr. Orndorff could no longer stand.

7. On August 3, 2018, Mr. Orndorff was admitted to Welch Community Hospital, in Welch, West Virginia. While at Welch Community Hospital, doctors discovered a mass in Mr. Orndorff's right adrenal gland.

8. Mr. Orndorff was transported from Welch Community Hospital to Princeton Hospital, in Princeton, West Virginia, on the same day.

9. While at Princeton Hospital, doctors performed CT scans, which revealed that the nodule in his left lung had grown, reaching approximately 2.2 x 2.2 cm in size. *See* Ex. 2, Page 1. Likewise metastatic disease was noted to exist in his adrenal glands. *Id.* at Page 2.

10. Doctors at Princeton Hospital ordered a biopsy of Mr. Orndorff's left lung. Mr. Orndorff was thereafter diagnosed with non-small cell carcinoma, a form of cancer. Mr. Orndorff's cancer had metastasized to his adrenal glands.

11. Doctors evaluated Mr. Orndorff's cancer as Stage IV. It is expected that Mr. Orndorff's cancer is terminal.

12. Given Mr. Orndorff's terminal diagnosis, on October 4, 2018, he was transferred to FMC Butner to receive chemotherapeutic treatment.

13. Since his transfer, it is understood that Mr. Orndorff's cancer has progressed and spread to his brain and spine. As a result of his Stage IV metastatic cancer, Mr. Orndorff currently cannot close his left eye and has lost hearing in his left ear.

14. Mr. Orndorff's doctors have stated that he may not live longer than a matter of weeks or months.

15. Mr. Orndorff intends to file a medical malpractice action arising out of his treatment at FCI Butner. Mr. Orndorff intends to bring this claim against the Government pursuant to the Federal Tort Claims Act, for negligence in the acts and omissions of employees of the United States. 28 U.S.C. §§ 1346, 2674. More particularly, if necessary following pursuit of his administrative remedies, Mr. Orndorff will sue the United States and allege that its agents failed to provide additional medical treatment, including chest x-rays, CT scans, MRI scans, and a biopsy of the left lung nodule. Mr. Orndorff believes that if the United States and its employees had performed these additional evaluations, he would have survived his disease.

16. Before Mr. Orndorff may file a Federal Tort Claims Act claim, he first must exhaust his administrative remedies. Mr. Orndorff has filed an administrative claim with the Federal Bureau of Prisons. The administrative claim submission was mailed on or about December 20, 2018. Given his present condition, however, Mr. Orndorff does not expect to live long enough to see the administrative process to its end. At the very least, there is a significant risk he will pass away during the pendency of the administrative process.

17. Given Mr. Orndorff's terminal condition, he respectfully requests that this Court grant this Petition to Perpetuate Testimony so that, should

he not survive the administrative process, he may present his testimony against the Government in a civil action.

18. Upon his request for compassionate release being granted, Mr. Orndorff was released into the custody of his sister in Abingdon, Virginia so that he may spend his final days outside of FMC Butner. The undersigned therefore ask that any the examination to perpetuate and preserve Mr. Orndorff's testimony take place at or near Abingdon, Virginia, if possible.

WHEREFORE, Mr. Orndorff respectfully requests that this Court grant his Petition to Perpetuate and preserve his testimony. Further, Mr. Orndorff requests that, within the next thirty (30) days, this Court direct the Federal Bureau of Prisons to permit the undersigned attorney to record Mr. Orndorff's testimony, both stenographically and by videotape, at a time agreeable to all counsel, including the United States Attorney, or his representative, assigned to defend the subject claims.

Respectfully submitted, this the 24th day of January, 2019.

/s/ Paul Turkheimer

Paul Turkheimer, Esq.

MD. State Bar I.D. No.: #08128

Meyers, Rodbell, and Rosenbaum, P.A.

6801 Kenilworth Ave. Ste. 400

Riverdale, Maryland 20737

(301) 699-5800

Attorneys for Petitioner Woodrow Scott Orndorff,
Jr.

/s/ Karl J. Protil

Karl J. Protil, Esq.

MD. State Bar I.D. No.: 12355

Shulman, Rogers, Gandal, Pordy & Ecker, P.A.

12505 Park Potomac Avenue, 6th Floor

Potomac, Maryland 20854

(301) 230-5200

Attorneys for Petitioner Woodrow Scott Orndorff,
Jr.

/s/ Jeremy M. Wilson

Jeremy M. Wilson

N.C. State Bar I.D. No.: 43301

email: jw@wardandsmith.com

For the firm of

Ward and Smith, P.A.

Post Office Box 7068

Wilmington, NC 28406-7068

Telephone: 910.794.4800

Facsimile: 910.794.4877

Local Civil Rule 83.1 Counsel

for Petitioner Woodrow Scott Orndorff, Jr.

VERIFICATION OF WOODROW S. ORNDORFF JR.

I, Woodrow Scott Orndorff, Jr., hereby affirm that I have read this Petition to Perpetuate Testimony, filed on my behalf. I verify, under pains and penalty of perjury, that the information contained therein is true and correct to the best of my knowledge, information and belief.

Acknowledged and affirmed this ____ day of December, 2018.

Woodrow Scott Orndorff, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2019, I electronically filed the foregoing VERIFIED PETITION TO PERPETUATE TESTIMONY with the Clerk of the Court using the CM/ECF system and further certify that I have this day served a copy of the foregoing by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail addressed to the following persons at the following addresses, which are the last addresses known to me:

Hon. Robert J. Higdon, Jr.
United States Attorney, Eastern District of North Carolina
Terry Sanford Federal Building
310 New Bern Ave., Ste. 800
Raleigh, NC 27601-1461

This the 24th day of January, 2019.

/s/ Jeremy M. Wilson
Jeremy M. Wilson
N.C. State Bar I.D. No.: 43301
email: jw@wardandsmith.com
For the firm of
Ward and Smith, P.A.
Post Office Box 7068
Wilmington, NC 28406-7068
Telephone: 910.794.4800
Facsimile: 910.794.4877
Local Civil Rule 83.1 Counsel
for Petitioner Woodrow Scott Orndorff, Jr.